

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SEAMOUNT INTERNATIONAL	:
ASSOCIATION LTD.,	:
	:
Petitioner,	:
	:
- against -	:
	:
	:
KUEHNE & NAGEL LTDA.,	:
	:
Respondent.	:
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DECLARATION OF CHARLES E. MURPHY
IN SUPPORT OF PETITION TO COMPEL ARBITRATION

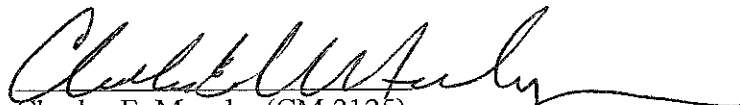
Charles E. Murphy declares under penalty of perjury of the laws of the United States of America as follows:

1. I am a member in good standing of the Bar of this Court and am a member of the firm of Tisdale & Lennon, LLC, which represents the interests of the Petitioner, Seamount International Association Ltd. (hereinafter "Seamount" or "Petitioner") herein.
2. I am familiar with the facts of the case, and I submit this Declaration in Support of Seamount's Petition to Compel Arbitration as against Respondent, Kuehne & Nagel Ltda. (hereinafter "K&N" or "Respondent").
3. To date, in response to the Court's Order of Maritime Attachment dated July 27, 2006 and the Court's Process of Maritime Attachment and Garnishment, K&N's assets in the amount of \$66,827.22 have been attached within this District.
4. In reply to K&N's memorandum of law in opposition to Petition to Compel Arbitration, I attach hereto as Exhibit "1" a true and accurate copy of two filings from the United

States District Court for the Southern District of Texas, case number H-05-1076, captioned *Kuehne + Nagel Ltda, et al. v. M/V TAIWAN SCAN, etc., et al.* Specifically, I attach Joint Motion to Stay Pending Arbitration dated March 21, 2005 by which K&N stipulated that “the parties have agreed to resolve disputes in this action according to the maritime arbitration rules of the Society of Maritime Arbitrators Inc. in a pending New York arbitration proceeding.” Also, I attach United States District Judge Rosenthal’s Order dated March 28, 2005 that provided “the parties’ joint motion to stay this case pending arbitration...is granted. This case is administratively closed pending the arbitration. The parties may move to reinstate the case on the court’s active docket within 20 days from the date the arbitration proceeding is concluded.” Seamount submits that these two documents demonstrate beyond any doubt that K&N agreed, and in fact intended, that all disputes between K&N and Seamount were subject to arbitration in New York.

5. Also in reply to K&N’s memorandum of law in opposition to Petition to Compel Arbitration, I attach hereto as Exhibit “2” Certificate of Mailing by the Clerk of the United States District Court for the Southern District of New York dated August 2, 2006 that evidences that Seamount provided written notice to K&N of this lawsuit that Seamount filed on July 27, 2006 pursuant to Rule B(2)(b) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 8, 2006.


Charles E. Murphy (CM 2125)

AFFIRMATION OF SERVICE

I hereby certify that on September 8, 2006, a copy of the foregoing –DECLARATION OF CHARLES E. MURPHY IN SUPPORT OF MOTION TO COMPEL ARBITRATION was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's CM/ECF system.


CHARLES E. MURPHY

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KUEHNE + NAGEL LTDA, <i>et al.</i>	§	
	§	
vs.	§	C.A. NO. H – 05 – 1076
	§	
M/V TAIPAN SCAN, <i>etc., et al.</i>	§	

JOINT MOTION TO STAY PENDING ARBITRATION

TO THE HONORABLE LEE H. ROSENTHAL:

Plaintiffs, Kuehne + Nagel Ltda., KN Servicios de Logistica Ltda., Kuehne + Nagel S.A. and Transpac Container System Ltd., doing business as Blue Anchor Line, and Defendants Global Navigation, Inc. (“Global”) and Seamount International Association Ltd. (“Seamount”), file this Motion to Stay Pending Arbitration, and respectfully submit:

I.

The parties have agreed to resolve disputes in this action according to the maritime arbitration rules of the Society of Maritime Arbitrators Inc. in a pending New York arbitration proceeding.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, Kuehne + Nagel Ltda., KN Servicios de Logistica Ltda., Kuehne + Nagel S.A. and Transpac Container System Ltd., doing business as Blue Anchor Line, and Defendants, Global Navigation, Inc. and Seamount International Association Ltd., pray that the Court grant this motion to stay pending arbitration and grant the parties all other relief to which they jointly may be entitled.

Respectfully submitted,

SHARPE & OLIVER, L.L.P.

By 

Robert C. Oliver

State Bar No. 15255700

S.D. Texas No. 886

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Telephone: (713) 864-2221

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OF COUNSEL:

R. M. Sharpe, Jr.

State Bar No. 18129000

S.D. Texas No. 889

ATTORNEYS FOR PLAINTIFFS

EASTHAM, WATSON, DALE &
FORNEY, L.L.P.

**

By



William A. Durham

State Bar No. 06281800

S.D. Texas No. 4172

The Niels Esperson Building

808 Travis, 20th Floor

Houston, Texas 77002

Telephone: (713) 225-0905

Facsimile: (713) 225-2907

ATTORNEYS FOR DEFENDANTS

** Signed by Permission

Certificate of Service

I served this Joint Motion to Stay Pending Arbitration and proposed Order upon all counsel of record by U.S. First Class Mail, hand delivery, third-party commercial carrier, facsimile transmission and/or electronic transmission on March 21, 2005.



Robert C. Oliver

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

KUEHNE + NAGEL LTDA, *et al.*,

Plaintiffs,

v.

M/V TAIPAN SCAN, *etc, et al.*,

Defendants.

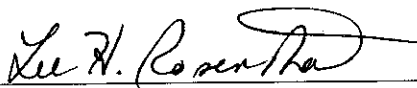
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CIVIL ACTION NO. H-05-1076

ORDER

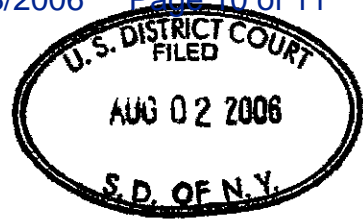
The parties' joint motion to stay this case pending arbitration, (Docket Entry No. 10), is granted. This case is administratively closed pending the arbitration. The parties may move to reinstate the case on the court's active docket within 20 days from the date the arbitration proceeding is concluded.

SIGNED on March 28, 2006, at Houston, Texas.



Lee H. Rosenthal
United States District Judge

EXHIBIT 2



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SEAMOUNT INTERNATIONAL ASSOCIATION Ltd.

Plaintiff,

-V-

KUEHNE & NAGEL, Ltda.

Defendants..

CERTIFICATE OF MAILING

06 cv. 5648(LTS)

I, J. Michael McMahon, Clerk of Court for the Southern District of New York, do hereby certify that on the

2nd Day of August, 2006

I served the

Petition to confirm Arbitration
Summons
Affidavit of Nancy R. Peterson
Memorandum of Law in Support of
Petition to Confirm Arbitration
Order from Judge Laura Taylor Swain

filed and issued herein on the
27th Day of July, 2006

by mailing by Federal Express , return receipt requested, in the Federal Express Mail Box located at 500 Pearl Street, New York, NY, a copy of each thereof, securely enclosed in a Federal Express Envelope with a prepaid international air bill addressed to:

See attached for listing of Defendants

Federal Express International Air Waybill Tracking Number(s)

849-0234-4110 # _____

Dated: New York, NY

J. Michael McMahon
CLERK

11 WEST 42ND STREET, SUITE 900
NEW YORK, NY 10036
(212) 354-0025
FAX (212) 869-0067



TISDALE & LENNON, LLC

ATTORNEYS AT LAW

10 SPRUCE STREET
SOUTHPORT, CT 06890
(203) 254-8474
FAX (203) 254-1641

www.TisdaleLennon.com

FedEx International Air Waybill Express For FedEx services worldwide

1 From Please print and press hard.

Date 8-2-06 Sender's FedEx Account Number _____

Sender's Name NKEY R. PETERSON Phone _____

Company TISDALE & LENNON, LLC

Address 11 WEST 42ND ST Suite 900

Address NEW YORK

City NEW YORK State NY

Country _____ ZIP Postal Code 10036

2 To Recipient's Name Karen Schoner Phone 551130373300

Company KUEHNE-NAGEL Services Logistics

Address Av. Brig. Faria Lima 2066

Address 60 andar

City São Paulo State SP

Country Brazil ZIP Postal Code 01451-905

Recipient's Tax ID number for Customs purposes
e.g., GST/HST/VAT/IN/VEIN, or as locally required

3 Shipment Information ☐ For ED Only: Tick here if goods are not in free circulation and provide C.I.

Total Packages 1 Total Weight _____ lbs. kg _____ DIM _____

Commodity Description Documents Harmonized Code _____ Country of Manufacture _____ Value for Customs 0

For U.S. Export Only: Check One ☐ No SED required per destination ☐ No SED required, value \$2500 or less per Schedule B Commodity number ☐ SED attached (provide export license no. and exp. date or license exception symbol, where applicable)

Total Declared Value for Carriage _____ Total Value for Customs (Specify Currency) 0

4 Express Package Service

☒ FedEx Intl. Priority ☐ FedEx Intl. First Available to select locations Higher rates apply.

☐ FedEx Intl. Economy FedEx Envelope and FedEx Pak rate not available.

Packages up to 150 lbs. / 68 kg For packages over 150 lbs. / 68 kg, use the FedEx Expanded Service Intl. Air Waybill.

5 Packaging

☐ FedEx Envelope ☒ FedEx Pak ☐ FedEx Box ☐ FedEx Tube

☐ Other ☐ FedEx 10kg Box* ☐ FedEx 25kg Box*

*These unique brown boxes with special pricing are provided by FedEx for FedEx Intl. Priority only.

6 Special Handling

☐ HOLD at FedEx Location ☐ SATURDAY Delivery Available to select locations for FedEx Intl. Priority only.

7a Payment Bill transportation charges to:

☒ Sender Acct. No. in Section 1 will be billed. ☐ Recipient ☐ Third Party ☐ Credit Card ☐ Cash Check/ Cheque

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Credit Card No. _____

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FedEx Acct. No. 1627-2841-5

8 Your Internal Billing Reference First 24 characters will appear on invoice.

1219

9 Required Signature

Use of this Air Waybill constitutes your agreement to the Conditions of Contract on the back of this Air Waybill, and you represent that this shipment does not require a U.S. State Department License or contain dangerous goods. Certain international treaties, including the Warsaw Convention, may apply to this shipment and limit our liability for damage, loss, or delay, as described in the Conditions of Contract. **WARNING:** These commodities, technology, or software were exported from the United States in accordance with Export Administration Regulations. Diversion contrary to U.S. law prohibited.

Sender's Signature: _____

This is not authorization to deliver this shipment without a recipient signature.

For Completion Instructions, see back of fifth page.

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ADMITTED IN NY & CT

PATRICK F. LENNON
ADMITTED IN NY & CT

CHARLES E. MURPHY
ADMITTED IN NY & CT

KEVIN J. LENNON
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